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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re X.C. et al., Persons Coming Under the
Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Plaintiff and Respondent,

v.

Z.C. et al.,

Defendants and Appellants.

F078768

(Super. Ct. Nos. 517937, 518164)

OPINION

APPEAL from an order of the Superior Court of Stanislaus County. Ann Q.
Ameral, Judge.

Elizabeth C. Alexander, under appointment by the Court of Appeal, for Defendant
and Appellant Z.C.

Karen J. Dodd, under appointment by the Court of Appeal, for Defendant and
Appellant T.B.

Thomas E. Boze, County Counsel, and Maria Elena R. Ratliff, Deputy County
Counsel, for Plaintiff and Respondent.

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INTRODUCTION

Mother T.B. appeals the juvenile court's order terminating her parental rights pursuant to Welfare and Institutions Code section 366.26¹ as to minors X.C. and A.C. Mother contends the juvenile court applied an incorrect legal standard in determining whether the "beneficial parent-child relationship exception" to termination of parental rights applied. In the alternative, mother contends the court erred by finding that mother had not met her burden to prove the exception applied. Father Z.C. joins in mother's arguments, contending the erroneous order resulted in the termination of his parental rights but does not raise any independent arguments. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND²

On May 18, 2017, the Stanislaus County Community Services Agency (agency) filed a section 300 petition on behalf of X.C. The petition alleged that X.C., then eight months old, came within the jurisdiction of the juvenile court under section 300, subdivisions (a) (serious physical harm) and (b)(1) (failure to protect). As to subdivision (a), the petition alleged X.C. was physically abused during a domestic violence incident between mother and father and that mother was punching father while he was holding X.C. X.C. was alleged to have bruises all over his body and bite marks on his buttocks. Further, it was reported mother suffered from bipolar disorder and had been charged with felony child abuse. As to subdivision (b)(1), it was alleged a mandated reporting party reported that X.C.'s health was endangered because the parents were not following through with medical care. On May 22, 2017, the juvenile court ordered X.C. detained. On June 28, 2017, the juvenile court found the allegations in the petition true and ordered reunification services as to mother and father, including

¹ All further undesignated statutory references are to the Welfare and Institutions Code.

² Our recitation of the facts is limited to a general overview of the proceedings and facts that pertain to the issues on appeal.

domestic violence classes, counseling, and substance abuse services, and as to mother, mental health services.

As of September 20, 2017, it was reported by the social worker that mother had been consistent with visitation with X.C. Visitation staff reported that on some occasions, mother ended her visits early without good cause or was more concerned about whether father was going to attend the visit than her own visit. Mother was described as appropriate and loving toward X.C. X.C. was placed with his maternal aunt on October 20, 2017.

In December 2017, mother gave birth to A.C. A referral was made to the agency because of the open dependency case regarding X.C. A.C. was taken into protective custody. On December 15, 2017, the agency filed a section 300 petition on behalf of A.C. alleging she came within the jurisdiction of the court under subdivisions (b)(1) (failure to protect), (g) (no provision for support), and (j) (abuse of sibling). As to subdivision (b)(1), it was alleged mother used marijuana while pregnant with A.C., had mental health issues including anxiety and depression which needed to be addressed, had made minimal progress in reunification with X.C., and had violent behavior. As to subdivision (g), it was alleged, as to father, that he was incarcerated and not able to provide and arrange care for A.C. As to subdivision (j), it was alleged the petition filed on behalf of X.C. was found true. A.C. was detained and placed with her maternal aunt, where X.C. also resided. On February 2, 2018, the court found the petition true as to A.C. and granted reunification services as to mother only.

In the social worker's six-month status review report as to X.C., filed December 20, 2017, it was noted that mother was appropriate around X.C., but could improve in her parenting skills. Mother was participating in many of her services but failed to submit to drug testing. The social worker administered a hair follicle test, which tested positive for marijuana and methamphetamines. Mother denied using the substances and blamed others and her environment for the positive result. Mother was

admitted to a sober living residential facility. She struggled to follow the rules of the facility, and her whereabouts were often unknown to the facility. She was eventually discharged from the facility because she threatened a child with a knife. Mother was also suspected of having a secret relationship with father, who had not participated in services. On January 4, 2018, the court found mother's progress in reunification services had been limited and that father had made no progress and ordered services be continued as to both parents.

The 12-month status review report as to X.C., filed June 8, 2018, recommended services be terminated as to mother and father and that a section 366.26 hearing be set to establish a permanent plan of adoption and termination of parental rights. The report indicated mother had been admitted back at the sober living residential facility but had been discharged for a second time due to unsafe behaviors, including tampering with a fire extinguisher and fire pull stations and being aggressive with children in the home. Mother's psychological evaluation indicated she suffered from a mental incapacity rendering her unable to care for her children. On July 13, 2018, the juvenile court terminated mother's and father's reunification services as to X.C. and set a section 366.26 hearing.

The six-month status review report as to A.C. echoed the sentiments of the 12-month status report for X.C. On August 23, 2018, the court terminated reunification services as to A.C. and set a section 366.26 hearing to coincide with the hearing for X.C.

The agency's section 366.26 report indicated mother regularly visited the children and had good interaction with them during visits. The children were reported to be content during visits. The report also indicated X.C. and A.C.'s caretaker wished to adopt them, and the children were bonded to their caretaker. The agency recommended mother's and father's parental rights be terminated as to both children.

A contested section 366.26 hearing was held on December 18, 2018. At the hearing, mother's attorney made the following offer of proof on behalf of mother:

“[I]f my client were to testify, she would swear to the following: She would state that she loves her children very, very much. . . .

“ . . . [A]s to in her interaction with her children during her visits, she would state that she believes they are going very, very well, and that she has been trying to be as consistent as possible with her visits during the duration of this case. And she would state that although there have been times with confusion as to scheduling, she believes that at most, perhaps she missed maybe two visits since this case has been open.

“She would state that she feels a little sad that she doesn’t believe the reports reflect the positive interactions she has had with her children during these visits, and she would share these interactions that she has had: She would state at visits she loves playing games, bringing toys to [X.C.], she sings ABC’s. She would state that she has taught her son how to interact with his little sister, [A.C.].

“She would state that nobody’s perfect but that she tries her best. And she would state that although parents sometimes can get frustrated . . . , she tries to implement the parenting skills she has learned in her classes not to get frustrated at her children and to treat them in a respectful and nurturing manner. She would state that she’s always thankful for another day with her children, and she wants to implement all of the items she’s learned in her parenting classes.

“She would state that when she sees her son [X.C.], that [X.C.] is happy to see her and that his face lights up. She would state that when they connect eyes, it is like everything disappears and it is just them two. She would state that happens to such an extent that she has to be conscious to give attention to both of the children during the visits.

“And as to [A.C.], she would say that she loves practicing with her on how to walk. And she would state that although at first the daughter may have not interacted as much because she was a new face and she has grown up with a relative caretaker, she feels that as the visits continue she’s had a fun time with her daughter and knows that—her daughter knows that she is someone that gives love to her and provides love to her at their visits. She would say that she feels that [A.C.] recognizes her as her mom. And one of the memories that she enjoys with her daughter is that during one of the visits she forgot to bring a book, so the daughter was interacting with the mom’s face, and she was teaching the daughter the anatomy of the face such as the eyes, lips and mouth as her daughter played with her.

“Again, she would conclude by saying she loves her children very, very much. That would be the extent of the offer of proof.”

Mother’s counsel argued that there was “some evidence of the parental-child exception” and asked the court to consider a legal guardianship as a permanent plan. The court terminated parental rights and found it likely X.C. and A.C. would be adopted.

DISCUSSION

Mother, joined by father, contends the court erred by finding the beneficial parent-child exception to termination of parental rights did not apply. Mother contends the court misapplied the law by relying on incorrect factors in determining the exception did not apply and, in the alternative, that “substantial evidence” did not support the court’s finding. We do not find merit in either contention.

At a section 366.26 hearing, when the juvenile court finds by clear and convincing evidence the child is adoptable, it is generally required to terminate parental rights and order the minor be placed for adoption. (§ 366.26, subd. (c)(1).) One of the statutory exceptions to the general preference of termination of parental rights is the “beneficial parent-child relationship exception.” Section 366.26, subdivision (c)(1) provides the court shall terminate parental rights unless “[t]he court finds a compelling reason for determining that termination would be detrimental to the child due to . . . the following circumstance[]: [¶] . . . The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) It is the parent’s burden to show that termination of parental rights would be detrimental to the minor because of the exception to termination of parental rights and adoption. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573-574.)

“Interaction between natural parent and child will always confer some incidental benefit to the child.” (*In re Autumn H., supra*, 27 Cal.App.4th at p. 575.) “[B]enefit from continuing the relationship,” as described by subdivision (c)(1)(B)(i) of section 366.26, however, has been interpreted to mean “the relationship promotes the well-being

of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*Ibid.*) “[T]he court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer.” (*Ibid.*) The preference for adoption is overcome if severing the relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed. (*Ibid.*) “The balancing of competing considerations must be performed on a case-by-case basis and take into account many variables, including the age of the child, the portion of the child’s life spent in the parent’s custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child’s particular needs.” (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 811 (*Zachary G.*)). Evidence of frequent and loving contact is not enough to establish a beneficial parental relationship. (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1315-1316.)

Here, the court gave the following reasoning for finding parental rights were to be terminated:

“Well, [mother] is crying, and I could certainly see why. This case makes me want to cry because [mother], no matter what ruling the Court has made in this case, always comes in with a smile and a sweet disposition. And I have always liked her personally because she just seems like a very sweet person. And I do believe that her visits with the children have indeed been positive. And it comes down to that—much as I would like if it were up to me and I could get away with it, order a legal guardianship—the Court is directed to find the so-called best permanent plan for children. And children of such young ages, the legislature and the courts dictate that the best permanent plan for children of such tender years is adoption.

“Even if the Court does examine the parent-child exception, it is very clear that [mother] has regularly and consistently visited with her children. And I believe that she loves her children with all her heart and soul. That has never been a question in my mind. And unfortunately, there were hiccups along the way that were serious enough to cause the Court to have to terminate [mother’s] reunification services. And once reunification

services are terminated, then the Court has to consider what would really be in the children's best interest.

“And even though [mother] has regularly and consistently visited, these children are extremely young. As [counsel] pointed out, [A.C.] has been in the care of the current care provider for pretty much her whole life. So although I am sure she enjoys her visits with [mother], the care provider is the only one who really [A.C.] knows to look for for comfort and support on a day in and day out basis.

“And it is extremely hard to prove the beneficial parent-child exception, the second prong, which is that the detriment of terminating parental rights is so great that that detriment is greater than the benefit the children receive through permanency through adoption. So as much as it pains me, and obviously more so for [mother], I really don't have any option but to go ahead and adopt the Agency's findings and recommendations.”

We find the court's statement of reasons to be a proper application of the law. Mother interprets the court's comments that it believed the visits to be positive and that if it “could get away with it, [the court would] order a legal guardianship” as the court “expressly [found] there was a beneficial relationship between the children and mother.” We believe this is a misinterpretation of the court's comments, particularly in context of the totality of the court's statement of reasons for terminating parental rights. It is possible for a court to find positive visits between parent and child but not that a beneficial parent-child relationship exists within the meaning of the statute. Here, though the court was clearly empathetic toward mother and found the children and mother had positive visits, the court found the exception did not apply because it did not find the children would suffer a detriment that would outweigh the statutory preference for adoption. This is not a misapplication of the law.

Mother contends the court erred by “relying on” the children's age, mother's reunification performance, and the children's relationship with the caregivers. We are not persuaded by any of these points. The court is clearly permitted by case authority, as

respondent points out, to consider the ages of the children. (See *Zachary G.*, *supra*, 77 Cal.App.4th at p. 811.)

The court is also permitted to consider the amount of time the children have spent in the parent's custody. (*Zachary G.*, *supra*, 77 Cal.App.4th at p. 811.) In the present case, A.C. had spent her whole life out of mother's custody and in the custody of the caretaker who wished to adopt her. X.C. had spent over half of his life out of mother's custody. By making the comment that A.C.'s caretaker is "*the only*" (italics added) person who fills a parental role in A.C.'s day-to-day life, the juvenile court was suggesting mother does not fulfill a parental role in A.C.'s life. We find the juvenile court's comment regarding the caretaker was a statement more about the children's lack of a parent-child relationship with mother than about the nature of the relationship between the children and the caretaker.

We are not persuaded by the two cases mother cites to support her argument that the court erroneously relied on the children's relationship with their caretaker, namely, *In re E.T.* (2018) 31 Cal.App.5th 68 and *In re S.B.* (2008) 164 Cal.App.4th 289. These cases are distinguishable because there was evidence on those records that there were strong attachments between the parents and the children. In *In re E.T.*, there was evidence that sometimes after visits, the children were sad and withdrawn and would act out, which could have been due to separation from the appellant. (*In re E.T.*, *supra*, 31 Cal.App.5th at p. 73.) The juvenile court there expressly found the children were " 'very tied to their mother.' " (*Id.* at p. 77.) In *In re S.B.*, the appellant was the child's primary caretaker for three years. (*In re S.B.*, *supra*, 164 Cal.App.4th at p. 298.) When the child was removed from the appellant's care, the child continued to display a "strong attachment" to the appellant. (*Ibid.*) The child was sad when visits ended and tried to leave with the appellant when visits were over. (*Ibid.*) The child told the appellant she would miss him and said she wished she lived with him. (*Ibid.*) In each case mother cites, the reliance on the good relationships the children had with their caretakers was

error because it ignored the attachment between the parent and child that was clear from the record. As we discuss, in the present case, there is no evidence of this level of attachment between mother and the children.

We do not find the juvenile court, in the context of its entire statement, inappropriately relied on the fact that mother had not succeeded at reunification. The court's statement regarding mother's "hiccups" during reunification was simply referring to the principle that, after reunification services are terminated, the goal is no longer reunification, but permanency and stability for the children. (See *In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) Mother ignores the strong statutory preference for adoption at the stage of the section 366.26 hearing. (See § 366.26, subd. (b).) We do not find the juvenile court misapplied the law in determining the beneficial parent-child exception did not apply, so we turn to mother's second contention.

The standard of review of a court's finding that a parent did not meet his or her burden to prove an exception to termination of parental rights applies is "whether the evidence *compels* a finding in favor of the appellant as a matter of law." (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528, italics added.) The evidence on the record before us does not compel a finding that the exception applies.

Here, because the court found the children to be adoptable, mother bore the burden of showing termination of parental rights would be detrimental to the children under the beneficial parent-child relationship exception. Mother contends she met her burden by showing there had been regular and consistent visitation and contact. This, however, is not enough. Mother also needed to show the children would suffer detriment due to the severance of the relationship. The record supports the children enjoyed mother's visits. Mother, however, did not present any evidence that the children would be greatly harmed if their relationship with her were severed. There was no testimony about whether the children appeared to miss mother or had a hard time leaving visits. To the contrary, the record contained evidence that X.C. "went willingly" at the end of visits. The caretaker

reported the children seemed to do “fine” after visits with mother. There was no evidence the children experienced distress leaving mother. The caretaker reported when she drops X.C. off, he looks back to the caretaker and she reassures him she will be coming back to get him, and she feels X.C. gets excited to see her after his visits. Mother did not present a bonding study that might have revealed the extent of their bond and whether the children would be harmed if that bond were severed. (See, e.g., *In re J.C.* (2014) 226 Cal.App.4th 503, 533-534 [the mother failed to demonstrate harm would ensue from termination of parental rights where the record showed the child easily separated from the mother at the conclusion of visits and readily returned to the caretaker’s home, and there was no bonding study or evidence to counter the social worker’s conclusion that the child would not suffer any detriment].) “[I]f an adoptable child will not suffer great detriment by terminating parental rights, the court must select adoption as the permanen[t] plan.” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229.)

An example of sufficient evidence of detriment is found in *In re Jerome D.* (2000) 84 Cal.App.4th 1200, where the appellate court concluded the juvenile court erred in failing to find the beneficial parent-child relationship exception applied when the nearly nine-year-old son had lived with his mother for the first six and one-half years of his life, he “seemed lonely, sad, and . . . ‘the odd child out’ ” in his placement, he wanted to live with his mother, he enjoyed unsupervised night visits in her home, and a psychologist opined the son and his mother “shared a ‘strong and well[-]developed’ parent-child relationship and a ‘close attachment’ approaching a primary bond.” (*Id.* at pp. 1206–1207.) Similarly, in *In re Amber M.* (2002) 103 Cal.App.4th 681, the appellate court reversed termination of parental rights, finding the exception applied, where a psychologist, therapists, and the court-appointed special advocate all concluded a beneficial parental relationship clearly outweighed the benefit of adoption, the two older children had a strong primary bond with their mother, and the younger child was strongly attached to her. (*Id.* at pp. 690–691.)

We do not find the evidence compels the court to have found the beneficial parent-child exception applies.

DISPOSITION

The juvenile court's order is affirmed.

DE SANTOS, J.

WE CONCUR:

MEEHAN, Acting P.J.

SNAUFFER, J.